IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.111 of 2005
Date of decision:27.11.2006

M/s. Shree Ambica Steel Industries, Mandi Gobindgarh

....Appellant

versus

Commissioner of Central Excise, Central Excise Commissioner II, Chandigarh and another

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr.JS Toor, Advocate, for the petitioner.
Mr. Gurpreet Singh, Advocate, for the respondent.

JUDGMENT:

This appeal has been preferred by the assessee against the order dated 23.2.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal), in E/Misc./853/04-B in A.No.E/1316/04-NP(B), proposing following substantial questions of law:-

"i) Whether the order of the learned Tribunal is non-speaking and an unjustified order under the facts and circumstances of the case?

ii) Whether the findings given by the departmental authorities and learned Tribunal are perverse under the facts and circumstances of the case?

Iii) Whether the findings of the departmental authorities and the learned Tribunal are as per the records, the statements and evidence on record?

iv) Whether the departmental authorities and learned Tribunal is justified in not allowing the modvat credit of

Rs.17,90,400/-?

v) Whether the learned Tribunal being the final fact finding authority under the Central Excise Act is not bound to give the detailed finding on the issues raised before it and give the finding after evaluation the evidence on record?"

Show Cause Notice was issued to the assessee under Rule 57-I of the Central Excise Rules, 1944 (for short, 'the Rules') read with Section 11A and 11AA of the Central Excise Act, 1944 (for short, 'the Act'), alleging that for the period from June 1996 to 18.9.1996, the assessee wrongly availed Modvat Credit in respect of goods which were never manufactured by the assessee. It was stated that at the time of visit by the team of the department on 18.9.1996, it was found that no power presses were installed in the factory; there was no stock of Washers; there was no other related machinery for running power presses. S/Shri Yashpal, Accountant and Mohinder Kumar made a statement that no power press was installed in the factory; Tikkies/Washers were never manufactured; no raw material for the manufacture of these items was received in the factory. This was also confirmed by Ram Lakhan Jaswal, Foreman. This was further confirmed on enquiries from Rudal Rai, Welder and Govinda and Ravi, Helpers. On physical verification, nil stock of finished Tikkies/Washers was found and no raw material for scrap generated was found.

Stand of the assessee was that at the time of visit of the team of the department, factory was closed and statement of unknown persons was recorded.

The Adjudicating Officer concluded that the assessee had violated provisions of Rules 57A, 57G of the Rules by claiming credit without actually bringing the inputs for manufacture of goods. Accordingly, the assessee was directed to pay duty of Rs.17,19,400/- with interest under section 11AB of the Act and penalty.

On appeal, the appellate authority affirmed the finding of the adjudicating authority. On further appeal, the Tribunal upheld the impugned order but except for setting aside penalty, it was held that simple purchase of raw material under duty paid invoices as claimed by the assessee was not

enough for claiming modvat credit when the assessee failed to prove use of inputs in relation to manufacture of goods which was statutory requirement.

Learned counsel for the assessee submitted that the order of the Tribunal was a non-speaking order and order of the adjudicating authority and the appellate authority were perverse and against record and thus, substantial question of law was involved. It was also submitted that levy of interest was not justified as Section 11AB of the Act was applicable to clearances effected after 28.9.1996.

Learned counsel for the revenue submitted that the adjudicating authority as well as the appellate authority have examined each and every point on behalf of the assessee and recorded detailed findings which were based on material on record and the said findings could not be held to be perverse. It was also submitted that the Tribunal in its order, though brief, has discussed the matter, upholding the view taken by the adjudicating authority and the appellate authority and the order of the Tribunal could not be held to be non-speaking order. It was also submitted that applicability of section 11AB of the Act was not in issue as penalty had been levied under section 11AA of the Act and even if a provision was wrongly mentioned, since levy of interest was permissible under section 11AA of the Act, the same was not liable to be set aside.

We have perused the impugned order and we find that the adjudicating authority has gone into all the issues raised by the assessee and rejected the version of the assessee and recorded a finding that the assessee never manufactured the goods in question in respect of which modvat credit was availed. The appellate authority has also minutely examined the matter and upheld the finding of the adjudicating authority. The Tribunal has also examined the matter, though its order is brief.

In view of the above, we are unable to hold that the impugned orders are vitiated on the ground that the same were perverse or had not considered the view point of the assessee.

As regards interest, we find that Section 11AA of the Act has been on the statute book w.e.f 26.5.1995 which clearly provided for levy of interest. Inapplicability of Section 11AB of the Act to the period prior to 28.9.1996 is of no consequence.

We thus, do not find any merit in this appeal filed by the

assessee.

No substantial question of law arises.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

November 27, 2006 (Rajesh Bindal)
'gs' Judge